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IN THE

Supreme Court of The United States

OF AMERICA

OCTOBER TERM, 1967

No. 590

ROBERT GRAHAM GRAY,

Appellant,

vs.

MARIE GRAY PORTER
(FORMERLY: MARIE K. GRAY),

Appellee.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland.

BRIEF FOR THE APPELLANT

ROBERT GRAHAM GRAY
708 First Colonial Road
Virginia Beach, Virginia

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IN THE

Supreme Court of The United States

OF AMERICA

OCTOBER TERM, 1967

No.

ROBERT GRAHAM GRAY,
Appellant,

vs.

MARIE GRAY PORTER
(FORMERLY: MARIE K. GRAY),
Appellee.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland.

BRIEF FOR THE APPELLANT

OPINIONS BELOW

There were no reports of the trial court's decisions; however, copies of the opinions that are pertinent to the issues raised herein appear in the Appendix.

The appellant is not advised as to whether the decision of the Court of Appeals of Maryland, entered in the September Term, 1966, has been reported; however, a copy of the said opinion also appears in the Appendix.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered in the September Term, 1966; and there were no petitions for rehearing filed therein. A decree was entered by the Court on the 9th day of May, 1967, staying the execution of the judgment until the 11th day of July, 1967, to allow the appellant to petition this Honorable Court for a Writ of Certiorari; however, pursuant to appellant's application, an order was entered by this Court on the 11th day of July, 1967, wherein the time for filing a petition for a Writ of Certiorari was extended to and including the 8th day of September, 1967. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A., Sec. 1257 (3).

QUESTIONS PRESENTED

Whether the failure of the trial court to proceed with a hearing on the merits in a divorce action, on the scheduled date for such hearing, and the continuance and subsequent hearing on the next day, without notice to the defendant in said cause, nor upon the agreement of Counsel; constitutes a violation of the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment, Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The appellee herein, Marie Gray Porter, then Marie K. Gray, instituted a divorce action in the Circuit Court for Allegany County, Maryland, against the appellant herein on the 6th day of February, 1956. At this time the appellee was a nonresident of the State of Maryland, and service against him was obtained by Order of Publication, and a decree pro confesso was entered against him on the 11th day of April, 1956, and testimony taken pursuant thereto. Subsequently, after leave of Court was obtained, an answer was filed by Counsel on behalf of the appellant on the 10th day of May, 1956. The appellant was subsequently notified by his then attorney, Edward J. Ryan, on the 12th day of May, 1956, that the matter had been dismissed (RT - 3). Subsequently, he was notified by Counsel on the 26th day of July, 1957, that the matter was set for hearing on the 29th day of July, 1957; however, the appellant had notified the attorney that had previously represented him, that he no longer desired his representation in the matter (RT - 6, 7, & 8); and that he would be present at the trial. Appellant appeared at the Courthouse of the Circuit Court for Allegany County, Maryland, on July 29, 1957, and found that the matter was not scheduled for

hearing, nor was there a hearing held on this matter on that date (RT - 3, 12). On or about the 3rd day of August, 1957, appellant was informed that a decree had been entered granting the appellee herein a divorce a vinculo matrimonii and awarding her alimony in the sum of Twenty Dollars ($20.00) per week.

On July 21, 1964, a petition was filed to revise the final judgment of the Circuit Court for Allegany County, Maryland, entered on the 30th day of July, 1957 (APP. 1a.); wherein it was alleged that the hearing on the merits of the case were conducted without due and timely notice, and accordingly, the decree based thereon was tainted with fraud and denied him his right to due process of law. Subsequently, in response to a show cause order entered by the Court, an answer was filed by the appellee herein on the 4th day of August, 1964.

Subsequently, on the 4th day of March, 1965, the matter came on for hearing before the Court, and at the conclusion thereof, a decree was entered by that Court wherein the petition was dismissed (APP. 2a.).

REASONS FOR GRANTING THE WRIT

Appellant has, and will in this proceeding, basically rely on his contention that the decree entered in the Circuit Court for Allegany County, Maryland, on the 30th day of July, 1957, due to the fact that the hearing upon which it was based, without due or proper notice to him, was a void, and not a voidable decree. Accordingly, he contends that he was not then, nor is he now, bound by the Maryland Rules of Court insofar as they pertain to final judgments and the revisory power of the courts over

such judgments. For the same reason, he further contends, as he did in the court below, that he cannot be guilty of laches.

From the foregoing, appellant's argument will be divided into two subjects, and submitted for the Court's consideration in the order listed:

1.) Does the guarantee of the Fourteenth Amendment to the Constitution of the United States, insofar as the right to due process of law is concerned, render a final judgment or decree void when the same is based on a hearing, of which there is no recorded transcript preserved in the record; and when the same was conducted on a date and time of which the defendant in the cause was not given due or proper notice?

2.) Does the entry of a final decree by a trial court, where the hearing upon which the same was based was conducted without due process of law, in that the defendant in the cause was not given notice of the hearing, and the same was not conducted by agreement of counsel, render such decree merely voidable or void ab initio?

There appears to be a great deal of conflict as to when the actual hearing was held in the trial court pursuant to the bill of complaint and the issues joined upon the filing of an answer by the appellant herein. However, there is nothing in the record to show that there was a hearing held in the Circuit Court for Allegany County, Maryland, on the 29th day of July, 1957.

The record and the transcript of the hearing held in that Court on the 4th day of March, 1965, on the petition to revise final judgment, would indicate that

there was not a hearing, or trial on the merits, in the original instance held on July 29, 1957; but that the same was held on July 30, 1957. At no place in the record or transcript of the latter hearing is it even suggested that notice was given to the appellant of a hearing on that date, nor that the same was held pursuant to agreement of Counsel.

The opinion of the trial court on the appellant's Petition to Revise Final Judgment, that was rendered and filed March 3, 1965 (APP. 2a.), merely states that there was nothing in the testimony to justify the recision of the divorce decree passed on July 30, 1957, and further held that the appellant was guilty of laches. It is well to note that there is no finding by the court that the original hearing was in fact held on July 29, 1957; nor is there anything in the record upon which to base a presumption, rebuttable or otherwise, that this hearing was in fact held on that date.

With reference to the date of the original hearing, the transcript reveals from the testimony of Robert Graham Gray, no hearing was held on that date: "—I came here and there was no case of July 29th", (RT - 3). On cross-examination, Gray's testimony again set forth the fact that there was no hearing on that date: "—I appeared and there was no trial, and I called Mr. Speir Cook and he told me there was no case here to be heard in court so I don't know nothing about this divorce case on July 30th until I got that judgment put against me." (RT - 12)

Counsel for the appellee herein, the complainant in the trial court, referred to an oral opinion by the trial

judge, contending that the same was filed on July 29, 1957:

"Mr. Manges: We offer in evidence the oral opinion of court by Judge Harris filed on July 29, 1957.

The Court: Well, I assume it would be part of the record in the divorce proceedings.

Mr. Manges: But, I believe, in the event of any appeal, it must be formally offered in evidence in this proceeding at this time.

Mr. Sullivan: We don't object.

Mr. Manges: We also offer the exhibit in evidence. For the record, I am offering the opinion of court in order to show at what stage of the proceeding Mr. Ryan struck his appearance or made an effort to strike it.

That is our case.

The Court: There seems to be some dispute. I think in your opening statement you said the decree was signed July 30th; is that correct?

Mr. Manges: Yes, sir.

The Court: Hearing was on the 29th.

Mr. Sullivan: We are saying that the hearing was on the 30th, the same day the decree was signed.

The Court: There is nothing to show that it wasn't.

Mr. Manges: The oral opinion was filed on the 29th. The Court Reporter could check his notes, I believe, probably, and find that is correct.

The Court: What is the date of the decree? Can any of us agree on that? I can look it up here.

Mr. Sullivan: July 30th.

Mr. Manges: I feel sure the memorandum opinion is on the 29th. The oral opinion of court, if the court please, was filed on July 29, 1957, and the decree the following day."

(RT 13-15). The original decree was entered on the 30th day of July, 1957; accordingly, it must be presumed; when the testimony of Mr. Gray is considered, then being nothing in the record to contradict his contention that there was no hearing on the 29th, that the hearing was held on the 30th of July, 1957. There is nothing in the record, nor is it even contended that there was notice given of a hearing on the 30th of July, 1957, or that such a hearing was held on that date pursuant to agreement of counsel.

All of which appellant contends falls within the rule set forth in the 17 Am. Jur., *Divorce and Separation*, Section 494:

> "If, on the other hand, the defendant did not have notice and an opportunity to defend the action, or if he was prevented or dissuaded from defending by duress, fraud, accident, or mistake, he may have the decree vacated on the ground of such duress, fraud, accident, or mistake."

2.) Does the entry of a final decree by a trial court, where the hearing upon which the same was based was conducted without due process of law, in that the defendant in the cause was not given notice of the hearing, and the same was not conducted by agreement of counsel, render such decree merely voidable or void ab initio?

The decision of the Court of Appeals of Maryland, entered and filed, per curiam, on the 12th day of April, 1967 (APP. 3a.), completely avoids the issue of when the hearing on the divorce proceeding was held, and to all intents and purposes based its opinion on the rules of court as regards the control of the court over final decrees. Apparently Rule 671, as set forth in the opinion, of the Maryland rules would leave the decree in the breast of the Court, and subject to modification for a period of 30 days; however, appellant contends that this in no way governs the issues raised herein. The court goes on to distinguish between a bill of review and an original bill for fraud. Here, again, the court has avoided the issue of whether the case was heard on the merits on the 29th or 30th day of July, 1957, and whether the same was heard after due and proper notice to the defendant therein.

Notwithstanding the reasons posed and set forth by the Court of Appeals of Maryland, as to how the decree was attacked, the question of the failure of due and timely notice was not passed on by the court. It is admitted that if this defect should only render the judgment voidable, the same would afford the same effect as if it were a valid one until it is reversed or vacated. (30A *Am. Jur., Judgments,* Section 44, p. 197)

In this respect appellant contends that the judgment was not merely voidable, but void ab initio, due to the fact that the original hearing was had, if in fact there was such a hearing, without due and proper notice to him. Accordingly, it is submitted that he, the appellant, was not bound by the various rules and procedure upon which The Court of Appeals of Maryland based its opinion; and particularly that he was not bound to resort to the appellate procedure to which the court referred.

The greater weight of authority as regards void judgments, which appellate submits is applicable under the existing facts, is set forth in 30A. *Am. Jur., Judgments,* Section 45, p. 197:

> "A void judgment is not entitled to the respect awarded a valid adjudication, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. — It has no legal or binding force or efficiency for any purpose or at any place. It cannot affect, impair, or create rights. — It may be attacked by a person adversely affected by it, in any proceeding, direct or collateral, and at any time. All proceedings founded on the void judgment are themselves regarded as invalid."

Appellant further contends, the judgment complained of being a void one as opposed to voidable, that he cannot be deemed guilty of laches. The generally accepted rule, as set forth in 30A *Am. Jur., Judgments,* Section 693, p. 659, holding that the defense of laches is not available against a motion to open or vacate a void

judgment, for the reason that no amount of acquiescence can make it valid.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT GRAHAM GRAY

FILED JULY 30, 1957

Marie K. Gray

vs.

Robert Graham Gray

No. 24422 Equity

In the Circuit Court

For Allegany County,

Maryland.

DECREE

This cause standing ready for hearing, testimony having been taken in open Court, and the Court being of the opinion that the proof sustains the allegations contained in the Plaintiff's Bill of Complaint.

It is thereupon this 30th day of July, 1957, by the Circuit Court for Allegany County, Maryland, sitting in equity, adjudged, ordered and decreed that the said Marie K. Gray, Plaintiff, be and she is hereby divorced a vinculo matrimonii from the said defendant, Robert Graham Gray; and,

It is further adjudged, ordered and decreed that the said Robert Graham Gray shall pay unto the said Marie K. Gray, a weekly allowance of Twenty Dollars ($20.00) by way of alimony for the Plaintiff, pending the further order of this Court.

And it is further adjudged, ordered and decreed that the defendant, Robert Graham Gray, shall pay the costs of these proceedings.

Morgan C. Harris

IN THE CIRCUIT COURT FOR ALLEGANY COUNTY, MARYLAND

MARIE K. GRAY,

Complainant,

vs.

ROBERT GRAHAM GRAY,

Respondent.

No. 24,422 Equity

This is a proceeding brought by Robert Graham Gray asking the Court to set aside a divorce decree passed by Judge Harris in favor of Mrs. Gray on July 30, 1957, on the ground that it was obtained by fraud.

The record of this divorce proceeding is voluminous and speaks for itself. There is nothing in the testimony that I have heard here today to justify the recision of this divorce decree passed by Judge Harris on July 30, 1957. The testimony of Mr. Gray simply amounts to a chastisement of the state courts and members of the bar, otherwise it accomplishes nothing.

Irrespective of any of the aforegoing, the respondent in this case is guilty of laches in that he has made no effort to have this decree set aside since 1957 when the divorce decree was granted.

For these reasons, the petition of the respondent asking that the divorce decree be set aside is hereby dis-

missed, the said respondent to pay the costs of this proceeding.

IN THE COURT OF APPEALS OF MARYLAND

Robert Graham Gray

v. (No. 238)

Marie K. Gray

PER CURIAM

September Term, 1966.

Appellant's petition, filed July 21, 1964, seeking to set aside a decree granting his former wife, appellee, a divorce *a vinculo matrimonii* on July 30, 1957, was dismissed by the Circuit Court for Allegany County on its merits, the court finding nothing in the record to justify the rescission of the divorce decree rendered some seven years previously.

Appellant's petition alleged that the divorce decree was procured by fraud in that appellant was not aware of the date set for the hearing of the matter before the chancellor and the appellant was thereby denied his right to contest the same.

Notwithstanding the issue of laches on the part of the appellant, the record is completely devoid of any evidence to support appellant's allegations of fraud. At the time the appellee filed her bill of complaint for a divorce *a vinculo matrimonii,* February 6, 1956, the appellant was living in Norfolk, Virginia. An order of publication was duly filed the same day and a decree *pro confesso* signed April 11, 1956. Subsequently, appellant filed a petition for leave to file an answer admitting receipt of a

copy of the bill of complaint and knowledge of the decree *pro confesso*. Leave was so granted and on May 10, 1956, appellant filed an answer through his attorney. A hearing was scheduled for July 29, 1957, and notice thereof was given to appellant's attorney. On the morning of the hearing, appellant sent the court the following telegram:

> "JUDGE YOUR HONOR PLEASE POSTPONE MY DIVORCE CASE UNTIL ANY DATE AFTER LABOR DAY IN ORDER FOR ME TO DEFINE MY CONSTITUTIONAL RIGHTS OF LAW, AND I REQUEST ATT. RYAN ALSO="

Other than requesting a postponement, which was denied, the telegram is ambiguous; however, it makes no mention of Mr. Ryan's being discharged before the date of the hearing, as appellant now alleges. Counsel for the appellant appeared at the hearing and made a motion to strike his appearance midway through the proceedings, which was denied as being unseasonably made and the divorce was granted. Appellant was notified of the granting of the divorce decree by his attorney and he further, in proper person, endeavored to note an appeal by telegram, but no further action was taken and the appeal was never properly perfected.

At the hearing on the petition to set aside the decree, appellant testified that he came to Cumberland from Norfolk on July 29, 1957, the date the divorce proceeding was heard, and that there was no hearing scheduled. Appellant further testified that he discharged his counsel on March 13, 1956; however, as has already been

noted, appellant's attorney appeared in his behalf at the hearing held on July 29, 1957.

Rule 671a provides: "A final decree, * * * shall be considered as enrolled from and after the expiration of thirty days from date of the same." The court's revisory power over an enrolled decree is limited to cases of "fraud, mistake, or irregularity." Rule 625a. It is settled Maryland law once a decree has been enrolled it may be reopened or set aside only upon a bill of review for error patent upon the face of the decree, or upon the allegation of newly discovered evidence, or upon the filing of an original bill for fraud. Here the appellant has alleged fraud but has attempted to reopen the decree by petition and not by an original bill. However, there are two recognized exceptions to the above stated rule which allow an enrolled decree to be attacked by petition. The first is where there is a showing that the decree was entered by surprise or mistake; the second is where the circumstances warrant the court to use its sound discretion and set aside the decree; however, these exceptions are only applicable if the case, *Pinkson* v. *Swift,* 231 Md. 346, 351, 190, A, 2d 533, 536 (1963); *Cramer, Trustees* v. *Wildwood Co.,* 227 Md. 102, 107, 175 A. 2d 750, 753 (1961); *Kennard* v. *McKramer Realty Co.,* 224 Md. 490, 496, 168 A. 2d 369, 372 (1961).

At bar the original divorce proceeding was heard upon the merits at which appellant was represented by counsel; thus the two exceptions to the general rule discussed above will not better the appellant's position. Assuming, *arguendo,* that the appellant's petition was to be deemed an original bill for fraud, the facts as recited above amply show that there was no fraud practiced upon

the appellant. The appellant admitted receiving a copy of the appellee's bill of complaint for divorce, a hearing was held at which he was present through counsel and he knew of the passage of the decree in ample time to note an appeal, as demonstrated by his abortive attempt to do so. On the basis of these facts the chancellor had no choice but to dismiss appellant's petition.

ORDER AFFIRMED, WITH COSTS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 590

ROBERT GRAHAM GRAY,

Petitioner,

v.

MARIE GRAY PORTER,
(FORMERLY MARIE K. GRAY),

Respondent.

(ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND)

BRIEF IN OPPOSITION

MARIE GRAY PORTER,
Proper Person,
P.O. Box 833,
Cumberland, Md. 21502.

The Daily Record Co., Baltimore, Md. 21203

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 590

ROBERT GRAHAM GRAY,

Petitioner,

v.

MARIE GRAY PORTER,
(FORMERLY MARIE K. GRAY),

Respondent.

(ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND)

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The Court is respectfully referred to the per curiam opinion of the Court of Appeals of Maryland, which is printed in the brief for the Petitioner in these proceedings on page 3a of the Appendix, and which is hereby incorporated herein by reference, and which this Respondent adopts as its statement of the case.

QUESTIONS PRESENTED

I. Whether or not a case in a state court in which no federal question was raised at any point in the proceedings may justify the granting of a Writ of Certiorari by this Court.

II. Whether or not a person who slept on his rights for seven years and the position of the parties markedly changed is entitled to a Writ of Certiorari to review said cause.

STATEMENT OF FACTS

The Respondent herein, Marie K. Gray Porter, then Marie K. Gray, instituted a divorce action in the Circuit Court for Allegany County, Maryland, and service against him was obtained by order of publication and a decree pro-confesso was duly entered against him on April 11, 1956, and testimony taken pursuant thereto.

Subsequently, leave of court was obtained and an answer was duly filed by counsel on behalf of the Petitioner on May 10, 1956. The case was set for hearing in the Circuit Court for Allegany County, Maryland, on July 29, 1957, and was heard on said date as is shown by the memorandum opinion of the Honorable Morgan C. Harris filed in the said cause on July 29, 1959, as is shown by a copy of the docket entries in the case, certified under Act of Congress and printed in the Appendix hereto.

The Petitioner sent the following telegram from Norfolk, Virginia, to Judge Morgan C. Harris:

PLAINTIFF'S EXHIBIT B

WESTERN UNION TELEGRAM

PA007 RA003 1957 Jul 20 AM 6 45

R NFA331 NL PD—Norfolk Vir 28—

JUDGED CIRCUIT COURT
WASHINGTON ST. (DLR BEFORE 930AM)—

Cumberland, Md.

JUDGE YOUR HONOR PLEASE POSTPONE MY DIVORCE CASE UNTIL ANY DATE AFTER LABOR

DAY IN ORDER FOR ME TO DEFINE MY CONSTITUTIONAL RIGHTS OF LAW, AND I REQUEST ATT. RYAN ALSO—

ROBERT GRAHAM GRAY 723 WEST 26th St.
NORFOLK VIR

This conclusively shows that the Petitioner who sent a telegram from Norfolk at 6:45 A. M., could not have been present on the same morning in Cumberland, which is more than three hundred miles away.

A decree a vinculo matrimonii was duly signed by the Court on July 30, 1957, and the Petitioner herein received notice of that decree on or about August 3, 1957, and attempted to take an appeal to the Court of Appeals of Maryland, which appeal was never perfected.

On July 21, 1964, a petition was filed in said cause to revise the final judgment of the Court entered on July 30, 1957, which was heard by the Circuit Court and following a decree against him, an appeal was taken to the Court of Appeals of Maryland. Upon a hearing, the said appeal was dismissed. The petition for Writ of Certiorari was then filed in this Court. No federal question was raised in either of the aforesaid hearings.

ARGUMENT

The Respondent objects to the issuance of this Writ of Certiorari and objects to the jurisdiction of the Court to grant it upon the ground that the brief filed by the Petitioner is fatally defective in that it does not comply with Rule 23 1 (f), of this Court which rule requires that "the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal question sought to be reviewed were raised; the method of

raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court."

It is respectfully submitted that at no stage of the proceedings was any federal question raised; hence, the inability of the Petitioner to comply with the above rule and, therefore, the petition is fatally defective and the Writ should not issue.

During the interim from the granting of the divorce and the filing of the petition to revise the decree, the Respondent remarried and was widowed. If it were to be held that after such a long period of time, a decree could be set aside, then this would make a bigamist of the Respondent, and no person could rely upon a decree duly issued and enrolled. There can be no question that the granting of the divorce was proper and that the Respondent had every right to rely upon it. Particularly, is this true in the failure of the Petitioner to perfect his appeal, which he attempted to take.

The Petitioner had at that time every means available to have the matter decided as to whether or not there had been a proper hearing and whether or not the court was correct in granting the divorce.

That the hearing was held on July 29, 1957, cannot be questioned as is conclusively shown by the docket entries (1a). The memorandum opinion of the Court was filed on that day and the final decree the following day.

It is further respectfully submitted that had the case been set for July 29 and continued until July 30, the Petitioner would have had such notice had he appeared in court on July 29; and at all events, he was represented in said hearing by his own counsel, counsel which he named in his telegram to Judge Harris on July 29.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

MARIE GRAY PORTER,
Proper Person,
P.O. Box 833,
Cumberland, Md. 21502.

APPENDIX

CERTIFIED COPIES OF DOCKET ENTRIES UNDER ACT OF CONGRESS

In the Circuit Court for Allegany County, Maryland

No. 24422 Equity

Marie K. Gray,

vs.

Robert Graham Gray

February 6, 1956—Bill of Complaint.

February 6, 1956—Order of Publication.

April 11, 1956—Printer's Certificate of Order of Publication.

April 11, 1956—Petition and Decree Pro Confesso.

April 26, 1956—Return of Testimony by Examiner Horchier with Plaintiff's Exhibits Nos. 1-2-3-4-5.

May 10, 1956—Petition of Robert Graham Gray and Order of Court granting him leave to file answer.

May 10, 1956—Answer of Robert Graham Gray.

July 29, 1957—Hearing before Judge Harris.

July 29, 1957—Opinion of Court by Judge Harris with Exhibits (Oral). Transcribed by Court Stenographer.

July 30, 1957—Decree A Vinculo Matrimonii from Defendant and that Robert Graham Gray pay $20.00 weekly alimony pending further Order of this Court, etc. (Judge Harris).

August 5, 1957—Appeal by Robert Graham Gray (by telegram).

May 31, 1960—Petition and Order of Court with show cause.

July 29, 1960—Petition and Order of Court with show cause.

July 21, 1964—Petition and Order of Court with show cause.

July 22, 1964—Served.

August 4, 1964—Answer to Petition to Revise Final Judgment.

March 3, 1965—Hearing (Associate Judge Hamill). Petition of July 21, 1964 dismissed — per Opinion of this date.

March 12, 1965—Petition for Appeal to Court of Appeals of Maryland.

June 21, 1966—Testimony.

June 27, 1966—Extension of Time for transmitting record to Court of Appeals.

July 7, 1966—Record transmitted to Court of Appeals.

State of Maryland, Allegany County, to-wit:

I, Joseph E. Boden, Clerk of the Circuit Court in and for Allegany County and State of Maryland, hereby certify that the above and aforegoing is a true copy of Docket Entries entered in the above and aforegoing entitled case No. 24422 Equity in the Circuit Court for Allegany County, Maryland.

In Testimony Whereof, I hereunto set my hand and affix the Seal of said Circuit Court for Allegany County, at Cumberland, Maryland, this 26 day of September A. D. 1967.

JOSEPH E. BODEN,

Clerk.

(Seal)

Maryland, Sct:

I, Harold E. Naughton, Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, do hereby certify that the aforegoing attestation of Joseph E. Boden, Clerk of the Circuit Court for Allegany County, Maryland, is in due form and by the proper officer.

Given under my hand at Cumberland, Md., this 26 day of September, 1967.

HAROLD E. NAUGHTON

State of Maryland, Allegany County, to-wit:

I hereby certify that the Honorable Harold E. Naughton whose genuine signature is subscribed to the aforegoing certificate, was at the time thereof Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, duly commissioned and sworn; and that, to all acts by him done in that capacity full faith and credit are due and ought to be given as well as in Courts of Justice as thereout.

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Allegany County, at the City of Cumberland, Maryland, this 26 day of September, 1967.

JOSEPH E. BODEN,

Clerk of the Circuit Court
for Allegany County, Md.

(Seal)

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IN THE

Supreme Court of the United States

OCTOBER TERM 1967

No. 590

ROBERT GRAHAM GRAY,
Appellant,

vs.

MARIE GRAY PORTER,
(FORMERLY: MARIE K. GRAY)
Appellee.

Petition for Re-hearing of Order Denying Petition for Writ of Certiorari

ROBERT GRAHAM GRAY
708 First Colonial Road
Virginia Beach, Virginia

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IN THE

Supreme Court of the United States

OCTOBER TERM 1967

No. 590

ROBERT GRAHAM GRAY,
Appellant,

vs.

MARIE GRAY PORTER,
(FORMERLY: MARIE K. GRAY)
Appellee.

MOTION

Petitioner, Robert Graham Gray, respectfully moves this Honorable Court for leave to file the annexed petition for re-hearing of the order of this Court denying the petition for a writ of certiorari in the case, entered on December 4th, 1967. Re-hearing is sought at this time by virtue of the fact that the transcript of the proceedings in the Trial Court were not previously available and, accordingly, did not constitute a part of the record when the original petition for a writ of certiorari was filed herein. The record, your petitioner feels, will conclusively show that the original hearing in this cause was not held on the date set forth in the decrees, and that he was not given notice of the trial date.

Petitioner, Robert Graham Gray, respectfully prays that this Honorable Court grant re-hearing of its Order of December 4th, 1967, denying his petition for a writ of certiorari previously filed herein, and that a writ of cer-

tiorari be issued to review the judgment of the Court of Appeals of Maryland entered in the September Term, 1966 in the above entitled cause, as prayed for in the Petition for a Writ of Certiorari presently filed herein.

REASON FOR GRANTING RE-HEARING

Petitioner submits that there was no record of the proceedings in the Trial Court filed with his original petition; due to the fact that the same was not available to him prior to the date of the filing of the original petition herein. A copy of the record of the proceedings in the Trial Court, together with pertinent correspondence from counsel, appears in the Appendix hereto.

Petitioner submits, from a review of the record of the proceedings, and his original petition filed herein, that no hearing was held on July 29th, 1957, in the Circuit Court for Allegany County, Maryland, as the transcript shows only a docket entry on that date (APP. 19a). The letter from Edward J. Ryan, Attorney, dated June 12th, 1963 (APP. 9a), further supports petitioner's contention that no trial was, in fact, held on July 29, 1957. Petitioner further alleges contrary to the further statement in the letter that he was not given notice, in any manner or form of the continuation of the proceedings to July 30th, 1957; further submitting that when he appeared on the 29th of July, he was merely informed that the case would not be heard that day.

Accordingly, your petitioner submits that his Constitutional Guarantee of Due Process of Law, as provided by the Fourteenth Amendment to the Constitution of the United States, when he was not given notice of the date of the hearing in the Trial Court, and your petitioner submits that the decree entered by the Circuit Court for

Allegany County, Maryland, on the 30th day of July, 1957, was a void judgment.

CONCLUSION

For the reason set forth above and in the petition for writ of certiorari, it is respectfully submitted that re-hearing be granted and that, upon such re-hearing, a writ of certiorari issue to the Court of Appeals of Maryland.

Respectfully submitted,

ROBERT GRAHAM GRAY,
Petitioner

ROBERT GRAHAM GRAY
708 First Colonial Road
Virginia Beach, Virginia

CERTIFICATE

I hereby certify that the foregoing petition for re-hearing is presented in good faith and not for delay and is restircted to grounds specified in Rule 58 of the rules of this Court.

ROBERT GRAHAM GRAY,
Petitioner

IN THE CIRCUIT COURT
FOR THE CITY OF NORFOLK
At Law

Docket No. 6880-M

MARIE K. GRAY PORTER,
Plaintiff,

vs.

ROBERT GRAHAM GRAY,
Defendant.

ANSWER TO INTERROGATORIES

Marie K. Gray Porter, Plaintiff, in Answer to Interrogatories, propounded by the Defendant, respectfully says:

One, Copies of Original Bill of Complaint, Order of Publication, Oral Memorandum of Court, exemplified under Act of Congress are hereto attached.

Two, Answering interrogatory No. Five, which reads: "State the date and place of the Plaintiff's remarriage," says:

Plaintiff was remarried on August 13th, 1962, in Frostburg, Allegany County, Maryland.

/s/MARIE K. GRAY PORTER

STATE OF MARYLAND, COUNTY OF ALLEGANY

TO WIT:

I HEREBY CERTIFY that on this first day of April, 1963, before me, the subscriber, a Notary Public,

in and for the State and County aforesaid, personally appeared Marie K. Gray Porter, personally known to me, and did subscribe the aforegoing interrogatories in my presence, and further make oath in due form of law, that the matters, facts, and things, therein avered are true and correct, to the best of her knowledge, information and belief.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and date 1st above written.

/s/

Notary Public

My Commission expires in May of 1963

Marie K. Gray	: No.: 24422 Equity
vs.	: In the Circuit Court
Robert Graham Gray	: For Allegany County

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Your Oratrix, complaining says:

FIRST: That on the first day of April 1929, she was married to one Robert Graham Gray, with whom she resided in the town of Midland, Allegany County, Maryland, until the fifteenth day of November, 1952

SECOND: That, although the conduct of your ORATRIX towards her husband, the said Robert Graham Gray, has always been kind, affectionate and above reproach, the said Robert Graham Gray, has, without just cause or reason, abandoned and deserted her,

and has declared his intention to live with her no longer, that such abandonment has been continuous and uninterrupted for the last eighteen months, and is deliberate and final, and the separation of the parties beyond any reasonable expectation of reconciliation.

THIRD: That, your ORATRIX and the said Defendant, Robert Graham Gray, have had one son born to them from said marriage, who is more than twenty-one years of age, and is an adult.

FOURTH: That, her said husband, the said Robert Graham Gray, is engaged in business in the State of Virginia, and that your ORATRIX requests that a reasonable allowance be made to her through the Court by way of permanent alimony.

FIFTH: THAT, your ORATRIX has been a resident of Allegany County, Maryland, for more than one year next preceeding the filing of her BILL of Complaint herein.

TO THE END, THEREFORE:

(1) That, your Oratrix may be divorced A VINCULO MATRIMONII from said Robert Graham Gray, her husband.

(2) That, your Oratrix may be declared to be entitled to receive, by way of alimony, such an allowance of her said husband's estate as may be proportionate to the means and situation in life of her said husband.

(3) That, your Oratrix may have such other and further relief as her case may require.

May it please your Honor to grant unto your Oratrix an Order of Publication, directed to the said Robert

Graham Gray, the Defendant, giving him notice of the object and purpose of this suit and warning him to be and appear in this Court in person, or by Solicitor, on or before the day named therein, and answer the premises and abide by and perform such a decree as may be proper in the premises.

And as in duty bound, etc.

/s/PAUL M. FLETCHER
Solicitor for Complainant

/s/MARIE K. GRAY

STATE OF MARYLAND, COUNTY OF ALLEGANY

TO-WIT:

I HEREBY CERTIFY, That on this 3rd day of February, 1956, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Marie K. Gray, who made oath in due form of law that the matters, facts and things contained in the aforegoing Bill of Complaint are true and correct to the best of her knowledge, information and belief.

WITNESS my Hand and Notarial Seal the day and year above written.

/s/MARION HULL
Notary Public

LAW OFFICE OF PAUL M. FLETCHER

MARIE K. GRAY vs. ROBERT GRAHAM GRAY; No. 24422 Equity, in the Circuit Court for Allegany County, Maryland.

ORDER OF PUBLICATION

The object of this suit is to obtain a divorce A VINCULO MATRIMONII by the Plaintiff from the Defendant.

The BILL states that the parties hereto were married on April 1, 1929, at Jeannette, Pennsylvania, and the Plaintiff has resided at Midland, Maryland, for more than three years next preceeding the filing of her BILL of Complaint, and that one child was born of said marriage, who is now an adult; that the Defendant, on or about the 15th day of November, 1952, deserted and abandoned the Complainant, and declared his intention to live with her no longer, and that she has neither seen nor heard from him since that time, and that such desertion and abandonment has been continuous and uninterrupted for more than eighteen (18) months prior to the bringing of this suit, and is deliberate and final, without any reasonable hope of reconciliation, and that the Plaintiff asks for permanent alimony, and that the Defendant. Robert Graham Gray, is a resident of Oceana, Virginia.

IT IS THEREUPON, This 6th day of February, 1956, by the Circuit Court for Allegany County, Maryland, in Equity, ordered that the Plaintiff cause a copy of this order to be published in some newspaper, once in each of four successive weeks, before the 7th day of March, 1956, giving notice to the Defendant of the ob-

ject and purpose of this suit, and warning him to be and appear in this Court in person, or by Solicitor, on or before the 23rd day of March, 1956, to show cause, if any he may have, why a decree should not be passed as prayed.

/s/JOSEPH E. BODEN
Clerk of the Circuit Court for Allegany County, Maryland

MARIE K. GRAY	:	No. 24422 Equity
vs.	:	In the Circuit Court
ROBERT GRAHAM GRAY	:	For Allegany County,
	:	Maryland

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Marie K. Gray, by Paul M. Fletcher, her attorney, respectfully represents:

That, heretofore, on the 6th day of February, 1956, she filed her BILL of Complaint in the above entitled cause, praying for a divorce A VINCULO MATRIMONII from the Defendant, Robert Graham Gray; Defendant was a non-resident of Allegany County, Maryland, and that service was obtained by an Order of Publication directed to the said Robert Graham Gray, Defendant, giving him notice of the object and purpose of the suit, and warning him to be and appear in this Court, in person, or by solicitor, on or before the 23rd day of March, 1956, to show cause, if any he may have, why a decree should not be passed as prayed.

That, said Defendant has not appeared in this Court in this case, either in person or by solicitor, and has filed

no answer to said BILL of Complaint, and the time in which he had the right to appear to file an answer has now expired, and your Petitioner is advised that she is now entitled to a decree PRO CONFESSO against said Defendant.

Wherefore, this Petitioner prays this Honorable Court to award a decree PRO CONFESSO against the said Defendant.

And as in duty bound, etc.

/s/PAUL M. FLETCHER
Solicitor Petitioner

ORDER OF COURT

The Defendant, Robert Graham Gray, having been duly warned by Order of Publication to appear and answer the Bill of Complaint heretofore filed, and having failed to appear thereto, it is thereupon this 11th day of April, 1956, by the Circuit Court of Allegany County, in equity, adjudged, ordered and decreed that the Bill of Complaint in this cause be, and the same is, hereby taken PRO CONFESSO against the Defendant.

/s/GEORGE HENDERSON

In the Circuit Court of the City of Norfolk, on the 24th day of June, in the year 1963.

Marie K. Gray Porter, Plaintiff,

vs. On a motion for judgment File #7374B

Robert Graham Gray, Defendant.

This day came the parties, by counsel, and upon motion of said plaintiff's counsel it is ordered that the jury

be dismissed and the case heard and determined by the Court. Whereupon it is considered by the Court that said plaintiff recover against said defendant the sum of Fifty Two Hundred Twenty Dollars ($5220.00), with legal interest thereon from August 13, 1962, till paid, together with her costs about her suit in this behalf expended, to all of which said defendant, by counsel, duly excepted.

A COPY TESTE: W. R. HANCKEL, CLERK
/s/IRMA F. VEAZEY, D. C.

FILED JULY 30, 1957

Marie K. Gray	: No. 24,422 Equity
vs.	: In the Circuit Court For
Robert Graham Gray	: Allegany County, Maryland

This cause standing ready for hearing, testimony having been taken in open Court, and the Court being of the opinion that the proof sustains the allegations contained in the Plaintiff's Bill of Complaint.

It is thereupon this 30th day of July, 1957, by the Circuit Court for Allegany County, Maryland, sitting in equity, adjudged ordered and decreed that the said Marie K. Gray, the said Plaintiff, be and she is hereby divorced A VINCULO MATRIMONII, from the said Defendant, Robert Graham Gray; and

It is further adjudged, ordered and decreed that the said Robert Graham Gray shall pay unto the said Marie K. Gray, a weekly allowance of twenty dollars ($20.00) by way of alimony for the Plaintiff, pending the further order of this Court.

And it is further adjudged, ordered and decreed that the Defendant, Robert Graham Gray, shall pay the costs of these proceedings.

/s/MORGAN C. HARRIS

EDWARD J. RYAN
Attorney and Counselor at Law
Cumberland, Maryland
Parkview 4-0140

June 12, 1963

James M. Hubbard, Esq.
Attorney at Law
Western Union Building
Norfolk 14, Virginia

Re: Robert Gray

Dear Mr. Hubbard:

I received your letter of June 11 pertaining to the divorce between Robert Gray and Marie Gray Porter.

I do not believe there is any question but that we can sell any interest in the property which Mr. Gray has in Midland to pay on account for the alimony Mr. Gray owes to his former wife.

I agree that since Mr. Gray is a non-resident we could not obtain a judgment personam against him. If Mr. Gray would be willing he could deed the property to his former wife, this in turn would save any expenses for the attachment. I would, if he will not do this, advise

that the property be sold and the matter disposed of by legal process. I do not see any sense in doing this because the divorce was granted to Mrs. Gray on July 30, 1957 and he was ordered to pay Mrs. Gray $20 per week. He would therefore owe her from July 30, 1957 to July 30, 1962, which is five years or 260 weeks, at the rate of $20 per week, or $5,200. In addition to that, there was a mortgage on the property at the time of the divorce and she made the payments on it and it is now clear. This, of course, would entitle her to an additional $1,780 or $6,980, being the full amount owed to her.

The property in question is a five-room house located in Midland. Midland is a small mining town about 20 miles from Cumberland and there are not any industries in Midland. It is almost a deserted village. There are several vacant houses on the main street some of which are condemned; some of which are boarded-up. (Mr. Hubbard)

The property would be, I believe worth approximately $2,500. My estimation of the worth of this property may be high. However, as you can see from what I have said the property is nowhere near worth the amount he owes her. She already owns a ½ interest, so his interest would be about $1,500 to $1,700. So you can realize the futility of Mr. Gray making any contest.

He was represented at the time of the trial. I sent him telegrams, letter and other forms, notifying him of the time of the trial, he did not appear so the Court went ahead without him. After the divorce was granted, I believe, he was sent a copy of the decree. He had 30 days from that time to take any action to have the decree changed but he did nothing.

Concerning the statement that he was in Cumberland on July 29th, I believe he was, but because of some engagement of the Court, the trial was continued until the 30th of July and the notice was given him but he just walked out.

I would appreciate it very much if you will let me know what Mr. Gray is going to do, if he is willing to sign a deed over to his ex-wife for the property she will sign a release. If not, we can send a copy of the decree to Norfolk and have the proceedings taken there, and have them take judgment against him for the money which he owes his former wife.

Appreciating your attention and hoping to hear from you soon.

Sincerely,

/s/EDWARD J. RYAN

EJR:yas

EDWARD J. RYAN
Attorney and Counselor at Law
Cumberland, Maryland
Parkview 4-0140
April 23, 1964

Mr. Robert Graham Gray
c/o Mellomint Medicine Co.
723 West 26th Street
Norfolk, Virginia

Dear Mr. Gray:

I am sending you herewith a copy of the proceedings filed in the Circuit Court for Allegany County, by your

former wife to enforce your obligation to pay her in accordance with the Decree of the Court, for money which you owe her under this decree.

In June of 1963, I received a letter from Mr. Hubbard, the attorney with whom you consulted. If you care to, I suggest that you see Mr. Hubbard or engage counsel here so that the matter can be closed.

Sincerely,

/s/EDWARD J. RYAN

EJR:yas

April 23, 1964

Mr. James M. Hubbard
Attorney at Law
Western Union Building
Norfolk 14, Virginia

Re: Robert Graham Gray

Dear Mr. Hubbard:

On June 11, 1963, you wrote me that you were representing Mr. Gray in the proceedings which his wife was bringing to sell a property in Midland, Maryland, on account of equity decree which she has against him.

I am enclosing herewith a copy of the attachment proceedings which have been filed this day.

If Mr. Gray would like to come and contest the matter I will be glad to see him and see if this matter can be disposed of.

I am sending a copy of this letter to Mr. Gray and if he contacts you, please get in touch with me so that the matter can be disposed of.

Sincerely,

/s/EDWARD J. RYAN

EJR:yas
CC: Graham Gray
Enc.

IN THE CIRCUIT COURT FOR
ALLEGANY COUNTY, MARYLAND

MARIE GRAY PORTER

vs.

GRAHAM GRAY

*NO: Law

GRAHAM GRAY to MARIE GRAY PORTER

Alimony per decree passed in the Circuit Court for Allegany County, Maryland, In No. 24422 Equity: Due from July 1952 to July 1962.
Ten Years at Twenty Dollars per week _____

Total: $10,400.00

STATE OF MARYLAND, ALLEGANY COUNTY, TO WIT:

I HEREBY CERTIFY THAT ON THIS _____ day of April, 1964 before me, the subscriber, a Notary Public of this State of Maryland, in and for Allegany County, personally appeared Marie Gray

Porter and did make oath in due form of law that the said Graham Gray is justly and bona fidely indebted unto her in the full and just sum of Ten Thousand Four Hundred ($10,400.00) dollars, and said affiant did further make oath that the said Graham Gray is non-resident of the State of Maryland, and his last known address is: Mr. Graham Gray, Mello-min Medicin Co., 733 West 26th Street, Norfolk, Virginia

WITNESS my hand and Notarial Seal the day and year last written

_____

Notary Public

IN THE CIRCUIT COURT FOR
ALLEGANY COUNTY, MARYLAND

MARIE GRAY PORTER *

vs. *

GRAHAM GRAY * No: _____ LAW

Mr. Clerk:

Please docket suit as above and file the enclosed account and affidavit and issue a writ of attachment to the sheriff with instructions to levy upon a property located in Midland, set forth and described in the Land Records of Allegany County, Maryland, in Liber No. 164, folio 645.

_____

Attorney for Plaintiff
Cumberland, Md., March 8, 1956

THIS IS TO CERTIFY, That the annexed Order of Publication was published in The Cumberland News a newspaper printed in the City of Cumberland, on the following dates:

February 8, 15, 22, 29, 1956.

THE TIMES AND ALLEGANIAN CO., PUBLISHERS

By SADIE BERKENBAUGH

LAW OFFICE OF PAUL M. FLETCHER

Marie K. Gray vs. Robert Graham Gray. No. 24422. Equity in the Circuit Court for Allegany County, Maryland.

ORDER OF PUBLICATION

The object of this suit is to obtain a divorce A VINCULO MATRIMONII by the Plaintiff from the Defendant.

The Bill states that the parties hereto were married on April 1, 1929, at Jeannette, Pennsylvania, and the Plaintiff has resided at Midland, Maryland, for more than three years next preceeding the filing of her Bill of Complaint, and that one child was born of said marriage, who is now an adult; that the Defendant, on or about the 15th day of November, 1952, deserted and abandoned the Complainant, and declared his intention to live with her no longer, and that she has neither seen nor heard from him since that time, and that such desertion and abandonment has been continuous and uninterrupted for more

than eighteen (18) months prior to the bringing of this suit, and is deliberate and final, without any reasonable hope of reconciliation, and that the Plaintiff asks for permanent alimony, and that the Defendant, Robert Graham Gray, is a resident of Oceana, Virginia.

IT IS THEREUPON, This 6th day of February, 1956, by the Circuit Court for Allegany County, Maryland, in Equity, ordered that the Plaintiff cause a copy of this order to be published in some newspaper, once in each of four successive weeks, before the 7th day of March, 1956, giving notice to the Defendant of the object and purpose of this suit, and warning him to be and appear in this Court in person, or by Solicitor, on or before the 23rd day of March, 1956, to show cause, if any he may have, why a decree should not be passed as prayed.

/s/JOSEPH E. BODEN
Clerk of the Circuit Court for
Allegany County, Maryland.

Trus Copy; Test:
JOSEPH E. BODEN, Clerk
Adv—Feb. No. 8-15-22-29

STATE OF MARYLAND }
COUNTY OF ALLEGANY }

I, JOSEPH E. BODEN, Clerk of the Circuit Court for Allegany County, Maryland, the same being a court of record of the aforesaid county, having by law a seal, do hereby certify that Edwin M. Horchler, Esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary

Public duly commissioned and sworn and residing in said county, and was, as such, an officer of said state, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said state, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well-acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature, and that the laws of this State do not require the filing of seal impressions.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 2nd day of April 1963.

/s/JOSEPH E. BODEN
Clerk of the Circuit Court for Allegany County, Cumberland, Maryland

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(Certificate under Act of Congress)

MARYLAND, SCT:

I, Morgan C. Harris, Chief Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, do hereby certify that the aforegoing attestation of JOSEPH E. BODEN Clerk of the Circuit Court for Allegany County, Maryland, is in due form and by the proper officer.

Given under my hand at Allegany County, Cumberland, Md., this 1st day of April, 1963.

/s/MORGAN C. HARRIS

STATE OF MARYLAND, ALLEGANY COUNTY, TO WIT:

I hereby certify that the Honorable Morgan C. Harris whose genuine signature is subscribed to the aforegoing certificate, was at the time thereof Chief Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, duly commissioned and sworn; and that, to all acts by him done in that capacity full faith and credit are due and ought to be given as well as in Courts of Justice as thereout.

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Allegany County, at the City of Cumberland, Maryland, this 1st day of April, 1963.

/s/JOSEPH E. BAKER
Clerk of the Circuit Court for
Allegany County, Maryland.

(Certificate under Act of Congress)

MARYLAND, SCT:

I, Morgan C. Harris, Chief Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, do hereby certify that the aforegoing attestation of Joseph E. Boden, Clerk of the Circuit Court for Allegany County, Maryland, is in due form and by the proper officer.

Given under my hand at Cumberland, Maryland, the 4th day of October 1962.

/s/MORGAN C. HARRIS

STATE OF MARYLAND, ALLEGANY COUNTY, TO WIT:

I hereby certify that the Honorable Morgan C. Harris whose genuine signature is subscribed to the aforegoing certificate, was at the time thereof Chief Judge of the Fourth Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, duly commissioned and sworn; and that to all acts by him done in that capacity full faith and credits are due and ought to be given as well as in Courts of Justices as thereout.

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Allegany County, at the City of Cumberland, Maryland, this 5th day of October, 1962.

/s/JOSEPH E. BODEN
Clerk of the Circuit Court for
Allegany County, Maryland.

Marie K. Gray : No. 24422 Equity

vs. : In the Circuit Court For

Robert Graham Gray : Allegany County, Maryland

DOCKET ENTRY

1957 Judy 29th Hearing before Judge Harris
STATE OF MARYLAND, ALLEGANY COUNTY, TO-WIT:

I, Joseph E. Boden, Clerk of the Circuit Court in and for Allegany County and State of Maryland, hereby

certify that the above and aforegoing is a true copy of "Entry" entered in the above and aforegoing entitled case No. 24422 Equity in the Circuit Court for Allegany County, Maryland.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of said Circuit Court for Allegany County, at Cumberland, Maryland, this 1st day of April A. D. 1963.

/s/JOSEPH E. BODEN
Clerk

STATE OF MARYLAND, ALLEGANY COUNTY, TO-WIT:

I, Joseph E. Boden, Clerk of the Circuit Court in and for Allegany County and State of Maryland, hereby certify that the above and aforegoing is a true copy of DECREE passed and entered in the above and aforegoing entitled case, No. 24,422 Equity in the Circuit Court for Allegany County, Maryland.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of said Circuit Court for Allegany County, at Cumberland, Maryland, this 4th day of October A. D. 1962.

/s/JOSEPH E. BODEN
Clerk

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF PRINCESS ANNE

On the 12th day of November, 1954

IN THE MATTER OF:
ROBERT GRAHAM GRAY } HABEAS CORPUS.

ORDER

This matter came on this day to be heard on the petition of Robert Graham Gray for a writ of habeas corpus ad subjieiendum, on the grounds that he was illegally detained by C. Roger Malbon, Sheriff of Princess Anne County, Virginia, in the jail of said County, by virtue of a warrant of the State of Maryland, Charging said Robert Graham Gray with desertion, non-support and violation of parole, sworn against him by Marie K. Gray, and it appearing that said Marie K. Gray has not been notified of said petition, and hearing thereon, it is ordered that this matter be continued for further hearing on Monday, December 6, 1954, at 10:00 A.M., or as soon thereafter as it may be heard;

And it further ordered that the said Robert Graham Gray be released from custody on the condition that he appear at said time, and upon his giving a bond in the sum of $350.00, conditioned upon his said appearance, and upon obtaining surety on said bond approved by the Clerk of this Court, and it is further ordered that John B. James, Attorney for Petitioner, send a copy of this order by registered mail November 12th, 1954 to the said Marie K. Gray.

A Copy Teste: John V. Fentress, Clerk

By: DORIS S. HALE, D.C.

December 10th, 1954.
In The Circuit Court of Princess Anne County

In the matter of
ROBERT GRAHAM GRAY } Habeas Corpus #2256

ORDER

This day came Robert Graham Gray, by his attorney, and the Court being advised that the warrant of the State of Maryland against said Robert Graham Gray, which was the basis of this proceeding, has been withdrawn, it is ordered that this proceeding be dismissed and that the said Robert Graham Gray be discharged from custody and the bond fixed in the order entered herein on November 18, 1954, be released.

A Copy Teste: John V. Fentress, Clerk
By: RICHARD R. GARRETT, D. C.

CHARLES W. SMITH
Attorney at Law
KEYSER, WEST VIRGINIA
Telephone 2-8361
August 23, 1957

Robert Graham Gray
723 West 26th Street
Norfolk, Virginia

In Re: GRAY vs. GRAY

Dear Mr. Gray:

Monday evening following your visit to my office I made a special trip to Cumberland, Maryland, and

held a conference with a fellow attorney, C. William Gilchrist, for approximately 1½ hours. We talked about the possibilities of reopening your divorce and your chances of obtaining any relief on the theory you were put out of business in Cumberland.

The following day Mr. Gilchrist made a complete study of the record in your divorce case. Among other things he found this to be so: That the Bill of Complaint was filed February 6, 1956, and that an order of publication was legally published and a registered letter sent to you notifying you of the taking of testimony; that the testimony was taken in April on the ground of desertion; that on May 10, 1956, Ed Ryan petitioned the Court at your insistence and was able to keep the case alive and gave you opportunity to file your answer, which was done; that Judge Harris entered *his opinion on July 29, 1957,* granting your wife a divorce on the grounds of desertion; that prior to the hearing you called Judge Harris and told him that you would not be there, and this was followed up by two telegrams which arrived the morning of July 29, and requesting postponement of your case until Labor Day; that Ed Ryan, your attorney, appeared and was present at this hearing on July 29, and he appeared in your behalf; and that the Court has ordered you to pay your wife the amount of $20.00 a week for support and alimony.

You informed me that you were present on July 29, for the hearing of this case, but I suppose you were mistaken on this. It is also obvious that you voluntarily appeared in this case and answered the Bill of Complaint. This gave the Court a basis for requiring you to pay the alimony mentioned above.

Robert Graham Gray

Mr. Gilchrist and I have both went through your case thoroughly and we have reached the conclusion that your attorney did everything that he possibly could in your behalf and that you were well and capably represented. The letters which you gave me indicate this also. Therefore, we are of the opinion that you have absolutely no grounds for reopening this case, and not wishing to tax you with further fees or additional costs, we respectfully decline employment in this matter as a result of the findings of our investigation.

As to your business being ruined in Cumberland and you having to leave the City of Cumberland, we are of the opinion that you would be wasting your time if you attempted civil or criminal action, and I respectfully decline employment in that matter. I suggest that you see Mr. Risher on that matter, but I see no ray of hope.

I trust that this letter will be received in the spirit in which it is sent. It is not my desire to fight a losing battle at your expense or at my own. I am returning to you the correspondence which you left with me, and I request that you send me no further fees. Thanking you for the opportunity to be of service to you, and with regrets that I can not be of further assistance to you, I remain

Very truly yours,

/s/CHARLES W. SMITH

CWS/ef
Enclosures: Letters

Law Offices

CHARLES WESLEY RISHER

Washington, D. C.
Wall Street, New York
Rockville, Maryland

June 24, 1958
Court Square
Rockville, 3, Maryland
Dictated 6/21

Mr. Robert Graham Gray
723 West 26th Street
Norfolk, Virginia

Dear Mr. Gray:

This will confirm our telephone conversations of this date. As a result of which I have reviewed your file and find the following.

Since retaining me August 29th, 1957 and your payment of $10.00 September 29, 1957, and your payment of $40.00 October 10, 1957, I have made two trips to Cumberland.

Your record involving the F.B.I. is cleared.

Your retainer for me to enter an appeal in your divorce case was received September 4th, too late to enter such an appeal. This check was returned to you. It is not possible to retry this divorce case after you have permitted the period of appeal to expire. Nor can you sue your attorney in Cumberland because he made an appearance at your trial in your behalf.

The fact that you were represented by counsel at this trial, before I came into the case, is the same as if you were there personally. Undoubtedly you appeared in

Court, but there being some confusion as to dates. Your counsel appeared for you and this is the same as if you were in Court yourself.

With regard to the Juvenile Court Order. The fact that you made a payment of $20.00 between November 12, 1952 and December 31, 1952, acknowledged the fact that you were aware of such an order. The suspended sentence which you received October 17, 1944 was under suspension by reason of parole which you violated. A hearing was held on the same, November 29, 1944. This can be cleared only on proper showing to the Court, otherwise it will run against you until you die, or it is cleared.

Therefore with the proper showing on the divorce decree, consideration will be given to your present and continued violation of parole, and until these matters are cleared in one way or another, you are subject to arrest in the State of Maryland.

I will be glad to take whatever action you may so desire if you will advise me what you wish upon the same.

Very truly yours,

CHARLES WESLEY RISHER
IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

No. 590

ROBERT GRAHAM GRAY,
Petitioner,

v.

MARIE GRAY PORTER,
(Formerly Marie K. Gray),
Respondent,

(On Petition for the use to Review the Petition forwarded from the Court of Appeals, Annapolis, Md., to the Federal Supreme Court, September 8, 1967, in the Brief in Opposition.)

* * * * *

IN THE COURT OF APPEALS OF MARYLAND
ROBERT GRAHAM GRAY,
Appellant

v.

MARIE K. GRAY, No. 238
Appellee

ORDER

The petition of Robert Graham Gray for a correction of error or omission in this cause having been reviewed and maturely considered by this court, it is

Adjudged, ordered and decreed that the Petitioner, Robert Graham Gray, be, and he hereby is, granted leave of this court to file said Petition.

IN THE COURT OF APPEALS OF MARYLAND
ROBERT GRAHAM GRAY,
Appellant

v.

MARIE K. GRAY,
Appellee

No. 238

* * * * *

PETITION FOR CORRECTION OF ERROR OR OMISSION IN RECORD

I, Robert Graham Gray, as an individual, do hereby certify that on this 9th day of January, 1967, a copy of this Petition for Correction Of Error Or Omission in Record was sent to Earl Edmund Manges, Attorney for Appellee, 220 So. Liberty Street, Cumberland, Maryland.

/s/ROBERT GRAHAM GRAY

* * * * *

IN THE COURT OF APPEALS OF MARYLAND

ROBERT GRAHAM GRAY, *Appellant*	:	
	:	No. 238
vs.	:	
MARIE K. GRAY, *Appellee*	:	September Term, 1966

* * * * *

MOTION NE RECIPIATUR

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Appellee, Marie K. Gray, by Earl E. Manges, her Attorney, hereby files a Motion Ne Recipiatur as to

the Petition for Correction of Error or Omission in Record filed in these proceedings, a copy of which was mailed to the Attorney for Appellee on the 9th day of January, 1967.

/s/Earl E. Manges
EARL S. MANGES
Attorney for Appellee
120 South Liberty Street
Cumberland, Maryland
Telephone: 724-1350

I HEREBY CERTIFY, That a copy of the aforegoing MOTION NE RECIPIATUR was mailed to John C. Sullivan, Esquire, Attorney for Appellant, 14 Green Street, Cumberland, Maryland, and a copy to Robert Graham Gray, Appellant, 708 First Colonial Road, Virginia Beach, Virginia, postage prepaid, this 17th day of January, 1967:

/s/EARL S. MANGES
Attorney for Appellee

* * * * *

QUESTION PRESENTED

I. Whether or not a case in a state court in which no federal question was raised at any point in the proceedings may justify the granting of a Writ of Certiorari by this court.

Questions presented of federal issue of the said petition that I, Robert Graham Gray, the petitioner, forwarded by registered mail to Earl Edmund Manges, Attorney-at-Law; Mrs. Marie Gray; Robert Kennedy,

the United States Attorney General; and forwarded a copy to the Federal Bureau of Investigation office in Washington, D. C., dated September 10, 1962; Chife J. Edgar Hoover, Federal Bureau of Investigation; Nicholous Katzenback; The United States Attorney General, dated October 11, 1965, John Doar, Assistant, Civil Rights Division, dated October 27, 1965; John C. Sullivan, Attorney-at-Law; John Doar, Assistant, Civil Rights Division, dated November 30, 1965; J. Lloyd Young, Clerk of the Court of Appeals, Annapolis, Maryland; Chief J. Edgar Hoover, Federal Bureau of Investigation; and John C. Sullivan, Attorney-at-Law, dated February 27, 1967.

* * * * *

COURT OF APPEALS
of Maryland
Annapolis, Md. 21404

Mr. Robert Graham Gray
708 First Colonial Road
Virginia Beach,
Virginia 23451

January 20, 1967

Dear Mr. Gray:

The Court has considered your "Petition for Correction of Error or Omission in Record," filed January 9, 1967, in the case entitled *Robert Graham Gray* vs. *Marie K. Gray*, No. 238, September Term, 1966, and, for your information, said petition was denied on January 19, 1967.

Very truly yours,
J. LLOYD YOUNG, Clerk.
By: /s/JAMES H. NORRIS, JR.
Chief Deputy

JHNjr/jr
cc:Earl E. Manges, Esq.

COURT OF APPEALS OF MARYLAND

No. 238 September Term, 1966

MARYLAND, Sct:

I Hereby Certify, that on the eighth day of July nineteen hundred and sixty-six I received from the Circuit Court for Allegany County Transcript of Record to the Court of Appeals of Maryland in the above entitled cause.

Brief for Appellant due to be filed August 17, 1966.
Clerk of the Court of Appeals of Maryland

/s/J. LLOYD YOUNG

THE COURT OF APPEALS
ANNAPOLIS, MARYLAND

September 6, 1967.

NOT PROPERLY BEFORE THE COURT IN MARYLAND

The Court instructs the Jury:

If you find that the defendant, Mr. Gray was not properly before the Court in Maryland and authorized counsel did not appear in his behalf, then the Maryland Court was without jurisdiction. If you so find that the Maryland Court lacked jurisdiction then this Court instructs you that full faith and credit of that judgment does not apply in this Court and you shall find your verdict for the defendant.

I stated to you that day and date and by telephone that if this corruption was not settled by September 1,

1962 that I would forward you the details of information for a settlement of my own with Paul Fletcher and forward a copy of the transcript to Robert Kennedy, the United States Attorney General and as follows:

Due to this corruption originating Paul Fletcher totally by law forced me out of business, out of my home, and out of the free state of Maryland from your office August 15, 1953 without allowing me an attorney at law to defend me, and as follows:

Due to this corruption originating caused Charles Allen McKoin to be poisoned instead of me and he died in minutes July 10, 1957. Due to this so-called murder crime of being hushed up caused James Bowden Ball's life to be threatened and caused me to take him to the FBI's office in Norfolk, Virginia as a federal parole violator, period of September 1, 1957 and I politely asked the FBI agents to federally imprison him for life and that they did September 20, 1957 and as follows:

Due to Marie, my former wife, getting remarried, I wish for a settlement with Paul Fletcher for $100,000 for damaging deformation of character, my free enterprise, home and family and constitutional rights of representation of due process of law in the free state of Maryland in closed courts and at your earliest convenience in the next thirty (30) days in Norfolk, Virginia.

And as follows: Therefore, I will take the Fifth Amendment for thirty (30) days if not a settlement, I will incriminate the corruption to Robert Kennedy, the United States Attorney General, why I took James Bowden Ball to the FBI's office.

And as follows: Due to no representation of a counsellor at law, I have to do the best I can.

With the very best of luck and personal regards, I am

Sincerly yours,

/s/ROBERT GRAHAM GRAY
7510-D Granby Street
Norfolk, Virginia

NOT SERVED WITH NOTICE TO APPEAR IN COURT ON JULY 30th, 1957

The Court instructs the Jury:

If you believe that the defendant, Mr. Gray, was not served with notice to appear in Court on the day and date that the non-support judgment in Maryland was rendered against him, and you further believe that the Maryland lawyer was not authorized to represent him in his absence then you shall find your verdict for the defendant.

D_____

NOT SERVED WITH DUE PROCESS OF LAW

Instruction No._____

THE COURT INSTRUCTS THE JURY:

One who has not been served with process may always show it, and in such a case he may show that any

lawyer who purported to represent him, did it without authority and as a consequence thereof may have the judgment set aside.

THE HUSBAND HAS THE RIGHT TO DETERMINE WHERE TO LIVE

The Court instructs the Jury:

That the husband has the right to determine where the married parties will reside. If a husband provides a suitable home and the wife refuses to move and join the husband then the wife, not the husband, is guilty of desertion.

D_____

PERSONAL JUDGMENT

The Court instructs the jury that a personal judgment must rest upon personal service of process, or upon voluntary appearance either in person or by some duly authorized agent, otherwise there is want of due process of law.

UNITED STATES CONSTITUTION

The Court instructs the Jury:

The provision in the United States Constitution that requires a state to give full faith and credit to a judgment of a sister State does not apply where the state rendering the original judgment was without jurisdiction.

D_____

_____

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a rehearing of the writ of certiorari should be granted.